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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/795,936      | 03/08/2004  | Kenneth Gimelli      | F6179(V)            | 1337             |

201 7590 03/26/2007  
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| EXAMINER |
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STULII, VERA

|          |              |
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| ART UNIT | PAPER NUMBER |
|----------|--------------|

1761

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 03/26/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/795,936

Applicant(s)

GIMELLI ET AL.

Examiner

Vera Stulii

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 14-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 01/12/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Group I (claims 1-13 and 19-20) in the reply filed on February 1, 2007 is acknowledged. The traversal is on the ground(s) that the product and process are in the same class, thereby minimizing any search burden. This is not found persuasive because these inventions are independent or distinct and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Objections***

Claim 20 is depended on the non-elected claim 18. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1-13 and 19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite for the recitation of the phrase "farinaceous-based food product". It is not clear as to how the recited product could be "farinaceous-based" when there is no farinaceous material recitation in claim 1.

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Claim 13 is indefinite for the recitation of the phrase "eggplant powder or particulate". It is not clear as to whether this phrase is directed to eggplant solids or some different interpretation. Claim 13 is indefinite for the recitation of both pepper and spices, since pepper is a spice.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Ventres et al (EP 0350552). Wiley Encyclopedia of Food Science and Technology is cited as evidence, as discussed below.

Ventres et al disclose method for producing farinaceous-based food product (alimentary pastes). In regard to claim 1, Ventres et al disclose farinaceous-based food product comprising a protein additive (egg) and a hydrophobic ester (glycerol monostearate) (p. 2 line 58, p. 4 line 21).

In regard to claim 2, Ventres et al disclose using "glutinous flour" (p. 3 line 40). Ventres et al disclose that "glutinous flour" provide a self-supporting paste when mixed with water (p. 3 lines 40-44). Ventres et al disclose that paste made with "glutinous flour" "will substantially retain its original form at ambient conditions or after subsequent processing, such as drying or cooking" (p. 3 lines 40-44).

In regard to claim 3, Ventres et al disclose that "[p]referred glutinous flours are semolina and durum flour" (p. 3 lines 55-56). In regard to claim 3, Ventres et al also disclose "[s]emolina flour, also referred to as "semolina" herein, is a common, hard, coarse, wheat flour obtained from durum wheat" (p. 3 lines 44-45).

In regard to claim 4, Ventres et al disclose "[t]he glutinous flour preferably comprises at least 75% by weight of the dry ingredients(p. 3 lines 54-55, p.9 Examples 5-10).

In regard to claim 5, Ventres et al disclose egg as a protein additive (p. 3 line 58).

In regard to claim 6, Ventres et al disclose that amount of additives (egg) is less than 25% by weight of dry ingredients (p.15 claim 14).

In regard to claim 7, Ventres et al disclose that glycerol monostearate is a suitable additive, and is commonly found in commercial pastas (p. 4 lines 21-22). As evidenced by Wiley Encyclopedia of Food Science and Technology, the HLB number of glycerol monostearate used in foods is less than 13 (3.7 for glycerol monostearate, and 5.5 for self-emulsifying glycerol monostearate) (p.605 Table 2).

In regard to claim 8, Ventres et al disclose (glycerol monostearate) (p. 4 line 21).

In regard to claim 10, Ventres et al disclose that the farinaceous-based food product contains about 0.3 % by weight glycerol monostearate (p. 9 Table III).

In regard to claim 11, Ventres et al disclose the moisture level of the farinaceous-based food product at the time of extrusion and as an extruded mixture does not exceed 28% by weight (p. 4 line 9, p.9 Examples 5-10).

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In regard to claim 12, Ventres et al disclose the moisture level of the farinaceous-based food product (dried alimentary paste) below about 13 % by weight.

In regard to claim 13, Ventres et al disclose farinaceous-based food product additives such as vitamin and spinach vegetable solids (p. 3 line 58, p.4 line 1).

Regarding claims 1 and 9, it is noted that since disclosure of Ventres et al meets the limitations of claims 1-13, and since Ventres et al discloses the farinaceous-based food product that is made using the same ingredients and amounts as recited, and since Ventres et al discloses a similar method of making such product (mixing flour, water, protein additive and hydrophobic ester, extruding the mixture in an extruder, drying the extruded mixture), then microscopic image of disclosed product would inherently display the same properties as recited, absent any clear and convincing evidence and/or arguments to the contrary.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ventres et al in view of Oh et al (US 6,217,918).

Ventres et al is taken as cited above.

Ventres et al do not disclose a meal kit comprising farinaceous-based food product.

In regard to claims 19 and 20, Oh et al disclose "[a] convenience food product comprising a microwavable pasta packaged in a container which facilitates even cooking in a microwave oven" (Abstract). Oh et al disclose that ingredients for pasta comprise semolina, durum, protein additive (egg), hydrophobic ester (lecithin) (Col. 4 lines 33-35, Col. 8 lines 60-61, Col. 9 lines 3-6). Oh et al also disclose "[t]he present invention overcomes the problems associated with the prior art by providing a microwave container having a combination of geometric features which enhance the efficiency and uniformity of microwave cooking by taking into account the dielectric

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properties of the liquid food products being cooked and the geometry of the container in relation to the microwave wavelength" (Col. 2 lines 29-37).

Since Ventres et al disclose farinaceous-based food product comprising durum semolina, protein additive, hydrophobic ester (lecithin), and Oh et al disclose a convenience food product comprising a microwavable pasta packaged in a container which facilitates even cooking in a microwave oven and use of the same ingredients as disclosed by Ventres et al, it would have been obvious to one of the ordinary skill in the art to modify disclosure of Ventres et al and package pasta in a microwavable container in order to produce a convenience food product which would facilitate even cooking in a microwave oven as taught by Oh et al.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Vera Stulii *V. Stulii*  
Examiner, AU 1761

*[Signature]*  
KEITH HENDRICKS  
PRIMARY EXAMINER